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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THOMAS GUH, an individual,
Plaintiff,

V.

UNUM LIFE INSURANCE
COMPANY OF AMERICA,
Defendant.

Case No.: 15-CV-2034

**COMPLAINT
FOR BREACH OF CONTRACT;
BREACH OF COVENANT OF
GOOD FAITH AND FAIR DEALING
(INSURANCE BAD FAITH)
and
DEMAND FOR TRIAL BY JURY**

Plaintiff Thomas Guh hereby files his Complaint against Defendant UNUM Life Insurance Company of America ("UNUM"), and alleges as follows:

GUH v. UNUM, et al., Case No. 15-CV-2034
COMPLAINT FOR DAMAGES [JURY DEMAND]

1 **I. JURISDICTION AND VENUE**

2 1. Jurisdiction is based on diversity of citizenship pursuant to 28 U.S.C.
3 § 1332. The amount in controversy, exclusive of interest and costs, exceeds the
4 sum of \$75,000.

5 2. Venue is proper in this Court based upon 28 U.S. C. § 1391(a).

6 **II. PARTIES**

7 3. Defendant UNUM LIFE INSURANCE COMPANY OF AMERICA
8 ("UNUM") is and at all times relevant hereto was a corporation formed under
9 the laws of the state of Maine with its principal place of business in the state of
10 Maine and is and at all times relevant hereto was an insurance company
11 licensed by the California Department of Insurance to conduct business in the
12 state of California, and can be found in this district.

13 4. Plaintiff Thomas Guh ("Plaintiff" or "Mr. Guh") is an 81-year old
14 grandfather and retiree who at all times relevant hereto was a resident of the
15 City of San Francisco, County of San Francisco, California.

16 **III. FACTUAL BACKGROUND**

17 5. On or around May 1, 2003, Mr. Guh applied, was approved for,
18 purchased, and was issued a policy of Long Term Care insurance from UNUM,
19 Policy No. LAC781106. (the "Policy"). The policy requires an annual premium,
20 which Mr. Guh has always paid timely. The policy provides coverage for 100%
21 of the cost of any nursing facility and/or residential care facility inpatient
22 treatment (*i.e.*, "Long Term Care"), up to \$6,000 per month, with no aggregate
23 maximum or limit.

24 6. All premiums due on the Policy have been paid. At all relevant
25 times, Mr. Guh performed all obligations under the policy on his part to be
26 performed.

1 7. Due to medical necessity occasioned by his deteriorating health, Mr.
2 Guh has been living under full-time care continuously since approximately
3 April 27, 2014. On or about April 27, 2014, Mr. Guh filed a claim for benefits
4 under his Long Term Care policy with UNUM. UNUM approved benefits for
5 Mr. Guh's medically necessary Long Term Care for the period from April 27,
6 2014 to May 20, 2014. UNUM unilaterally elected to consider the claim for
7 benefits subsequent to November 13, 2014, as a new claim, and subsequently
8 also approved benefits for the period after November 13, 2014, and is still
9 paying those benefits. However, UNUM denied coverage for Mr Guh's the
10 period from May 20, 2014 to November 13, 2014. There was no difference in Mr.
11 Guh's diagnosis, physical or cognitive abilities, or the medical necessity of his
12 Long Term Care before and after November 13, 2014, and UNUM's selection of
13 that date was arbitrary. Even Mr. Guh's treating physician, a geriatric specialist,
14 wrote a letter stating that Mr. Guh has required continuous Long Term Care
15 since April 2014, but UNUM disregarded the letter and never communicated to
16 Mr. Guh what additional information he could provide in order to perfect his
17 claim for benefits.

18 8. Mr. Guh administratively appealed UNUM's denial of benefits for
19 the initial period of his Long Term Care to UNUM's Appeals Unit. UNUM's
20 telephone agent contacted Mr. Guh's guardian to notify her that they were
21 attempting to get the appeal approved, but with no further contract, UNUM
22 then sent a final denial letter denying the Long Term Care benefits for the
23 period prior to November 13, 2014.

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III. CAUSES OF ACTION
FIRST CAUSE OF ACTION
BREACH OF INSURANCE CONTRACT

9. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs as if they were set forth here in full.

10. At all times relevant hereto, Mr. Guh held an enforceable contract or contracts of insurance with UNUM. The contract required UNUM to pay for Mr. Guh's Long Term Care expenses.

11. At all times Mr. Guh did all things required of him under his contract with UNUM in order to be at all times fully eligible for the insurance benefits that UNUM refused to pay.

12. UNUM breached the contract by refusing to pay benefits that were due under the terms of contract.

13. Wherefore, Mr. Guh prays damages against Defendants as set forth hereinbelow, in an amount to be proven at trial.

SECOND CAUSE OF ACTION
**BREACH OF THE COVENANT OF GOOD FAITH AND FAIR
DEALING
(INSURANCE BAD FAITH)**

14. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs as if they were set forth here in full.

15. All insurance contracts issued and/or administered in the State of California have implied in them a covenant of good faith and fair dealing. UNUM breached its duty of good faith and fair dealing owed to Mr. Guh in the following respects:

(a) by intentionally and unreasonably applying the Policy provisions so as to limit UNUM's financial exposure and

1 contractual obligations and to maximize profits, placing its own
2 economic interests above those of Mr. Guh;

- 3 (b) by unreasonably denying him coverage for the expenses
4 covered under the Policy;
5 (c) by misrepresenting the terms of the Policy;
6 (d) by unreasonably failing to properly investigate Mr. Guh's
7 claims; and
8 (e) by unreasonably compelling Mr. Guh to institute litigation to
9 recover amounts due under the Policy.

10 16. Mr. Guh is informed and believes that UNUM has a pattern and
11 practice of delaying claims decisions so as to frustrate insureds' reasonable
12 expectations of prompt payment under Long Term Care policies.

13 17. Plaintiff is informed and believes and thereon alleges that UNUM
14 has breached its duties of good faith and fair dealing owed to Mr. Guh by other
15 acts or omissions of which Mr. Guh is presently unaware. Mr. Guh will amend
16 this Complaint at such time as he discovers the other acts or omissions of
17 UNUM constituting such breach.

18 18. As a proximate result of the aforementioned wrongful conduct of
19 UNUM, Mr. Guh has suffered damages under the Policy, plus interest, for a
20 total amount to be shown at the time of trial.

21 19. As a further proximate result of the aforementioned wrongful
22 conduct of UNUM, Mr. Guh has suffered anxiety, worry, mental and emotional
23 distress, all to his general damage in sum to be determined at trial.

24 20. As a further proximate result of the aforementioned wrongful
25 conduct of UNUM, Mr. Guh was compelled to retain legal counsel to obtain
26 benefits under the Policy. Therefore, UNUM is liable to Mr. Guh for those

1 attorney fees reasonably necessary and incurred by Mr. Guh to obtain Policy
2 benefits, in an amount determined at the time of trial.

3 21. UNUM's conduct described herein was intended by UNUM to
4 cause injury to Mr. Guh or was despicable conduct carried on by UNUM with a
5 willful and conscious disregard of Mr. Guh's rights, subjected Mr. Guh to cruel
6 and unjust hardship in conscious disregard to his rights, and was an intentional
7 misrepresentation, deceit, or concealment of a material fact known to UNUM
8 with the intention to deprive Mr. Guh of property, legal rights or to otherwise
9 cause injury, such as to constitute malice, oppression, or fraud under California
10 Civil Code § 3294, thereby entitling Mr. Guh to punitive damages in an amount
11 appropriate to punish or set an example of UNUM, and to deter similar conduct
12 by it and others in the future.

13 22. UNUM's conduct in wrongfully denying Long Term Care benefits
14 to Mr. Guh was an unfair act and practice which caused Mr. Guh to suffer a loss
15 of income, a substantial loss of property set aside for personal care and
16 maintenance, and assets essential to his health and welfare. Mr. Guh is a
17 disabled person and senior citizen within the meaning of California Civil Code §
18 3345, and as a consequence of UNUM's wrongful actions herein, Mr. Guh is
19 entitled to a trebling of any punitive damages imposed by the trier of fact
20 pursuant to California Code § 3294.

THIRD CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
Under Cal. Bus. & Prof. Code § 17200, *et seq.*

24 23. Mr. Guh re-alleges and incorporates by reference all of the
25 preceding paragraphs as if they were set forth here in full.

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1 24. The California Unfair Competition Act, Cal. Bus. and Prof. Code §
2 17200, *et seq.* prohibits those during business in the State of California from
3 acting unfairly or unlawfully in their business practices.

4 25. In doing the things herein alleged, UNUM was engaging in
5 business practices. The business practices of UNUM alleged herein were both
6 unlawful and unfair, as set forth herein, and allowed UNUM to earn additional
7 incremental profits in excess of those earned by its marketplace competitors
8 who honored their contracts and declined to adjudicate Long Term Care claims
9 in bad faith.

10 26. As a direct and proximate result of UNUM's unfair and/or
11 unlawful business practices herein alleged, Mr. Guh was directly injured.

12 27. Wherefore, Mr. Guh prays injunctive relief and restitution set forth
13 below.

PRAYER FOR RELIEF

15 | WHEREFORE, Plaintiff prays for judgment as follows:

1. For a judicial declaration that UNUM breached its contract of insurance
with Mr. Guh, and breached the covenant of good faith and fair dealing
inherent in said contract;
 2. For an award of damages sufficient to compensate Mr. Guh for his
emotional pain and suffering proximately caused by UNUM;
 3. For an award of punitive or exemplary damages in an amount sufficient
to punish UNUM for its bad faith conduct and to deter similar conduct by
UNUM and by others in the future;
 4. For trebling of any punitive damages pursuant to California Civil Code §
3345;
 5. For an award of Mr. Guh's costs and attorney fees incurred herein;

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- 1 6. For an injunction against UNUM's business practice of denying Long
- 2 Term Care coverage when the coverage is available under the terms of its
- 3 insurance policies;
- 4 7. For an award of attorney fees;
- 5 8. For disgorgement and/or restitution of all moneys and/or profits
- 6 wrongfully earned or obtained by UNUM as the result of its conduct
- 7 herein alleged; and
- 8 9. For such other and further relief as the Court deems just and proper.

9 DATED this 5th day of May 2015.

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11 **Creitz &
Serebin LLP**

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13 By /s/ Joseph A. Creitz
14 Joseph A. Creitz
15 Attorneys for Plaintiff
16 Thomas Guh

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2 **JURY DEMAND**
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4 Plaintiff hereby demands a jury trial on all claims and causes of action.
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6 DATED this 5th day of May 2015.
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8 **CREITZ & SEREBIN LLP**
9

10 By /s/ Joseph A. Creitz
11 Joseph A. Creitz
12 Attorneys for Plaintiff Thomas Guh
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